

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 80 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

and

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CADILA CHEMICALS PVT.LTD.

Appearance:

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This reference is at the instance of the revenue.

The following questions have been referred for the

opinion of this Court in respect of the assessment year 1983-84 :

1 "Whether, the Appellate Tribunal is right in law and on facts in holding that subsidy amount should not be deducted from the cost of plant and machinery for allowing depreciation, investment allowance and for computation of capital employed under section 80J of the Income Tax Act, 1961 ?"

2 "Whether, the Appellate Tribunal is right in law and on facts in holding that for working out relief under section 80HH of the Act, initial depreciation has not to be deducted from the profits of the company ?"

2 We have heard Mr.M.R.Bhatt, learned Counsel for the revenue. Though served, none appears for the respondent assessee.

3 At the hearing of this reference, learned Counsel for the revenue fairly states that the controversy raised in question No.1 is covered in favour of the assessee by the decision of the Apex Court in C.I.T. vs. P.J.Chemicals Ltd., 210 I.T.R.830. Since the subsidy in question was a general subsidy for establishing industry in backward area, in view of the aforesaid decision of the Apex Court our answer to question No.1 is in the affirmative i.e. in favour of the assessee and against the revenue.

4 Coming to question No.2, learned Counsel for the revenue relies on the decision of this Court in Pushpak Ltd. vs. C.I.T., 210 I.T.R. 535, wherein this Court relied on the decision of the Apex Court in case of Cambay Electric Supply Industrial Co.Ltd. vs. C.I.T.(1978) 113 I.T.R. 84 and C.I.T. vs. Gautam Sarabhai (1981) 129 I.T.R.133, holding that unabsorbed losses and unabsorbed depreciation have to be deducted before arriving at the figures that would be quantified for the purpose of deduction under section 80HH of the Income-tax Act, 1961. We may also add that with effect from 1.4.1989, Parliament inserted section 80AB laying down that where any deduction is required to be made or allowed under any section in Chapter VIA under the heading "Deductions in respect of certain income", then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed under the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be

the amount of income of that nature which is derived or received by the assessee and which is includible in the gross total income meaning thereby a depreciation will have to be deducted before making any deduction under section 80HH.

5 In view of the aforesaid decision, our answer to question No.2 is in the affirmative i.e. in favour of the revenue and against the assessee.

6 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt